

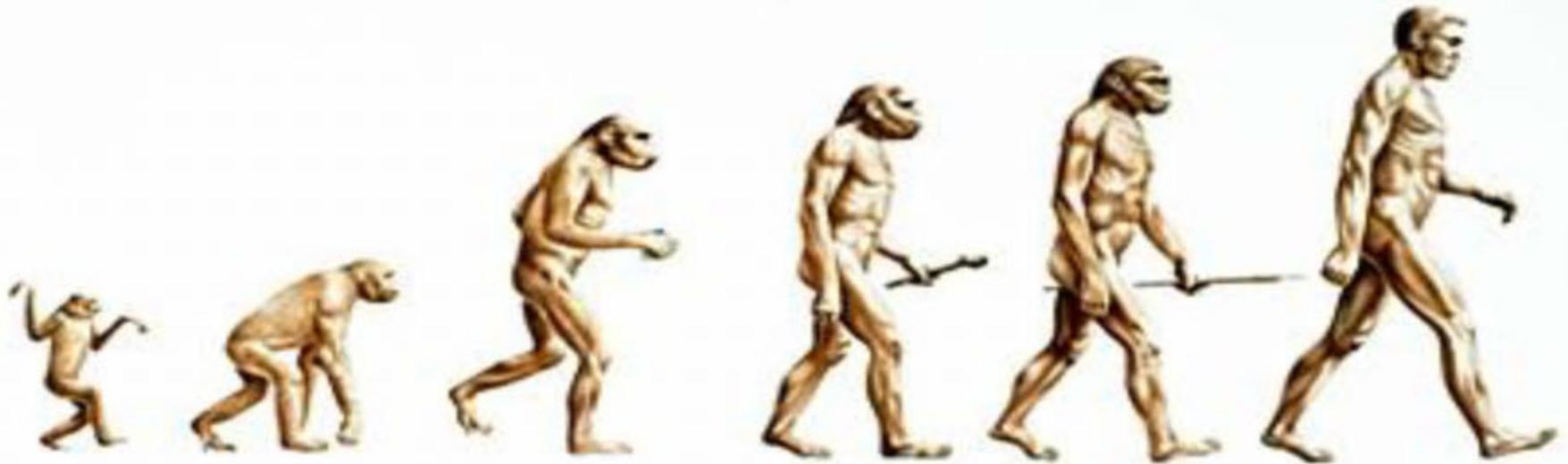
CDIAC

**CALIFORNIA
DEBT AND
INVESTMENT
ADVISORY
COMMISSION**

**SESSION ONE:
PROPOSITION 218 AND THE
LEGAL FRAMEWORK OF
ASSESSMENT DISTRICTS IN
CALIFORNIA**

Proposition 218

How did we get here?

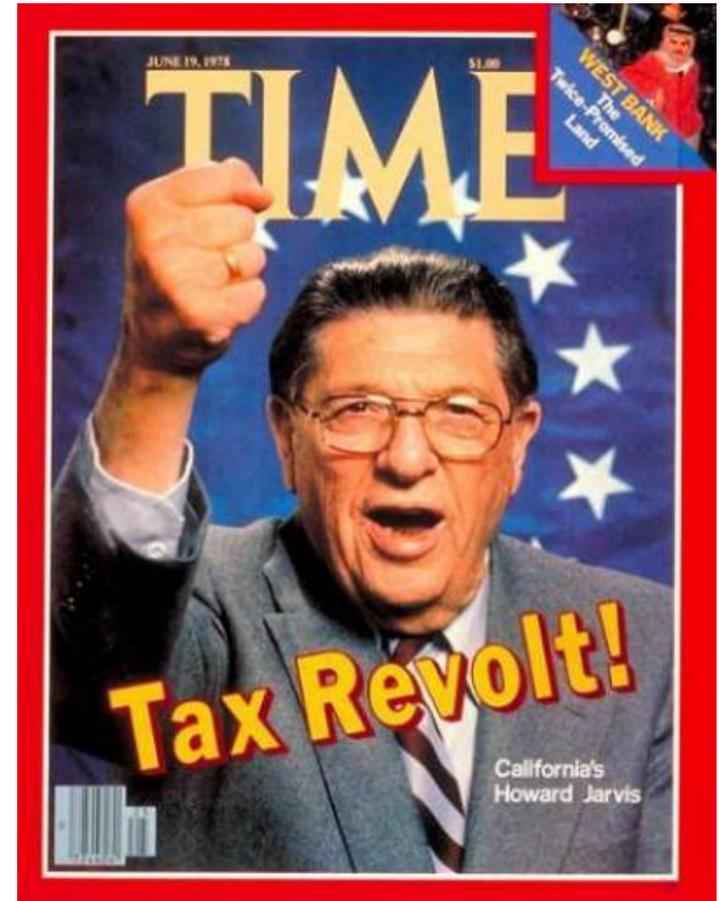


Proposition 13 - Background

- Prior to 1978
 - ▣ Property taxes funded costs of infrastructure and municipal services needed to keep pace with new growth and an expanding population
 - ▣ Mid-60's – in response to scandals among assessors, legislation passed to peg assessed values to market value of properties triggering increased property taxes

Proposition 13 - Background

- ▣ Property values increased 70% between 1975 and 1978
- ▣ Retired property owners particularly hard hit
- ▣ Triggered initiative measure seeking property taxpayer relief



Proposition 13 (1978)

- Property tax rate limitation (Article XIII A, section 1)
 - Maximum amount of *ad valorem* tax or real property limited to 1% of full cash value
- Restriction on local taxes (Article XIII A, section 4) – Cities, by a 2/3rds vote of qualified electors, may impose special taxes

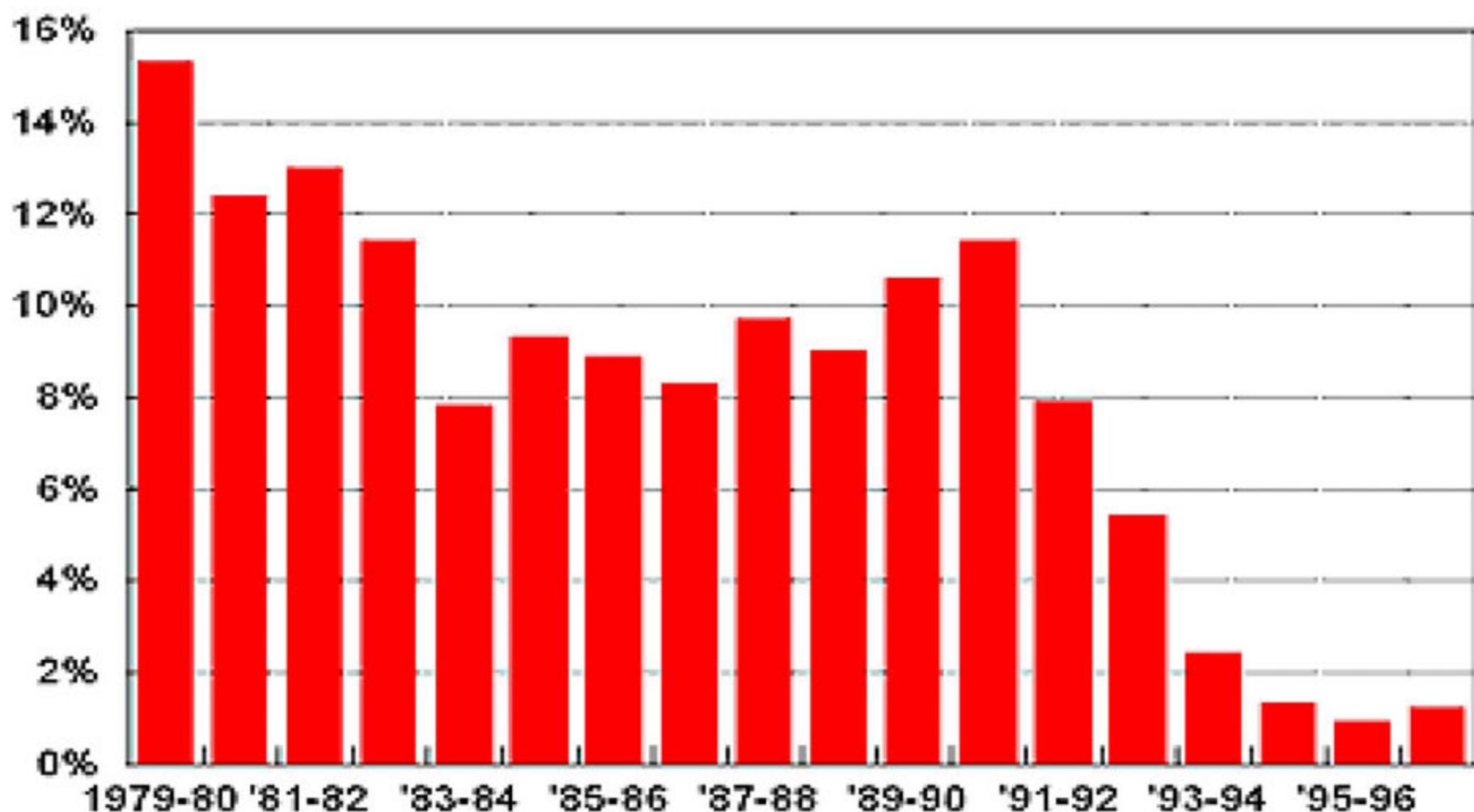
Proposition 13 - Impact

- Reduced property tax revenues to local governments by more than half (57%)
- Abolished any local control with regard to property taxes
- Forced cities to look for new sources of revenue to fund increasing demands for municipal services

Property Tax Growth Rates

Annual Growth After Proposition 13

Figure 1



Source: State Board of Equalization, Annual Reports

Proposition 13 – Judicial Review

- *County of Fresno v Malmstrom* (1979) –
 - ▣ 1% limit on *ad valorem* taxes does not apply to special assessments
 - ▣ Special assessment is not a special tax
 - ▣ Special assessment is a charge for benefits conferred upon real property which cannot exceed the benefits conferred on such properties

Proposition 62 (1986)

- Reaction to various forms of new local taxes and increases in fees in the wake of Proposition 13
- Restated 2/3 voter approval requirements for special taxes and majority approval general taxes



Increase In Assessment Revenues

- Cities turned to assessment district revenues to augment tax revenues
- Between time of passage of Prop 13 and 1992-1993, benefit assessment revenues rose 976% to \$304 million annually

Knox v City of Orland (1992)

The Straw that Broke the Camel's Back



- Supreme Court upheld Orland's levy of assessments
- Rejected argument that park maintenance did not specially benefit properties assessed and that assessment was a special tax

Closing the Proposition 13 Loophole

Joel Fox, Howard Jarvis Taxpayers Association:

“After Prop 13's success, bureaucrats looked for ways to raise revenues while avoiding Prop 13's restrictions. They hit upon assessment districts, . . .

Over time, bureaucrats molded assessments into property taxes that avoid Proposition 13's restrictions. The courts supported this artistry by ignoring the historical precedent demanding a link between assessments and a direct benefit to property. They held that assessments could be used for operational budgets and maintenance costs and were not covered by Proposition 13's limits and vote requirements.

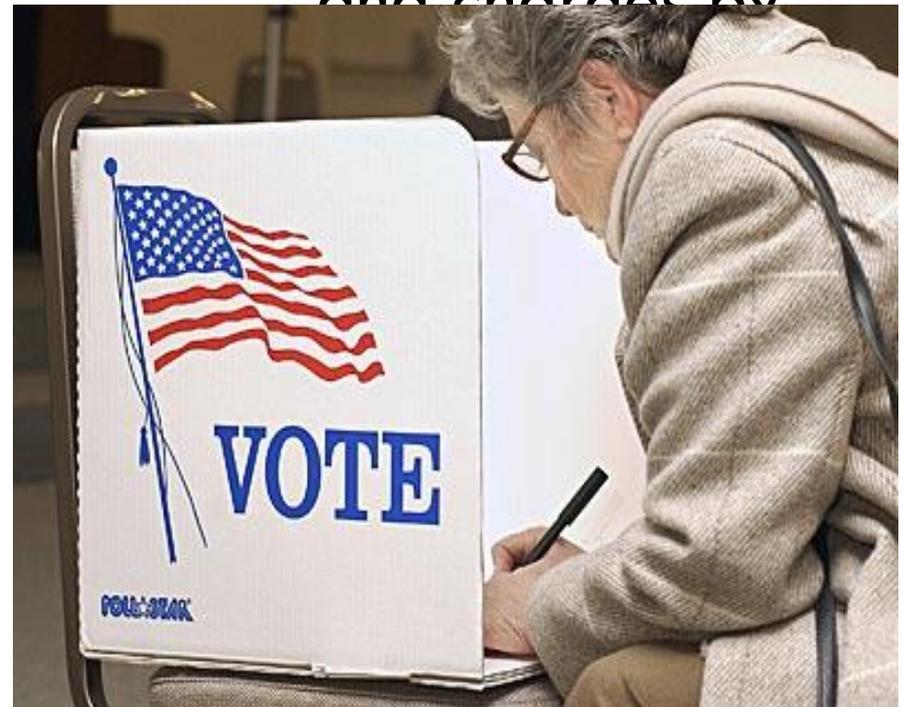
Assessments have become unrestricted property taxes. They appear on your property tax bill. There are no limits on how high assessments can go. There are no limits to how many assessments can be placed on your property.

..

Prop. 218 will continue Prop 13's legacy of protecting property owners from being the cash cow forced to fund most local services ”

Proposition 218 (1996)

- Expands restrictions on government spending
- Allows voters to repeal or reduce taxes, assessments, fees, and charges by initiative process
- Reiterates voter approval requirements for general taxes (majority) and special taxes (2/3)



Proposition 218

- Article XIII D, § 4 (Assessments)
 - Establishes new substantive requirements:
special benefit and proportionality
 - Establishes new procedural requirements:
majority ballot protest procedures

Substantive Requirements

- Only “special benefits” are assessable
- California Constitution article XIII D, § 2(i):
“Special benefit” means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute “special benefit.”
- Local agency, State and Federal Properties are not exempt from assessment

Substantive Requirements

- Assessments must be supported by a detailed engineer's report prepared by a registered engineer certified by the State
- Identify all properties that receive special benefit
- Separate the general benefits from the special benefits

Substantive Requirements

- Calculate the assessment for each identified parcel
- Determine the proportionate special benefit in relationship to the entirety of the cost of the improvement or services
- No assessment shall exceed the reasonable cost of the proportional special benefit conferred on that parcel

Procedural Requirements



- Hold a public hearing
- Mail Notice of the public hearing to property owners at least 45 days in advance

Procedural Requirements - Notice

- The Notice must include:
 - ▣ proposed assessment
 - ▣ total of all assessments for the district
 - ▣ the duration of the assessment
 - ▣ the reason for the assessment
 - ▣ the basis upon which it was calculated
 - ▣ date, time, and location of the public hearing
 - ▣ a ballot and summary of procedures for completing it, including a disclosure statement that the existence of majority protest will result in the assessment not being imposed

Procedural Requirements - Ballots

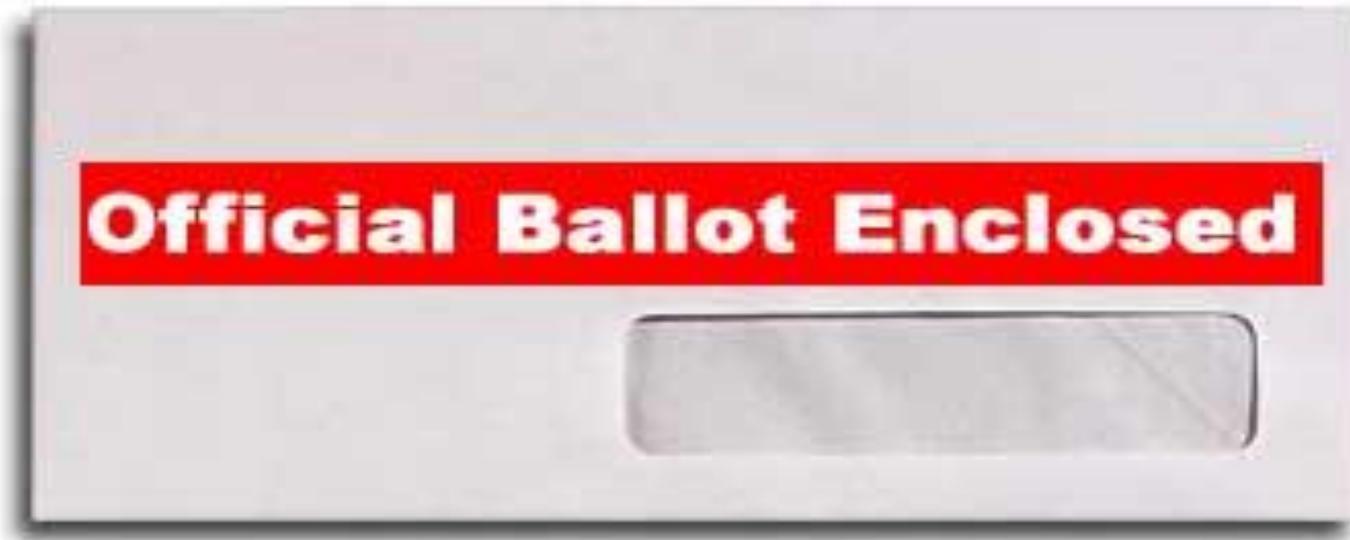
- Ballots must include:
 - ▣ agency's address for receipt
 - ▣ a place for the name of the property owner and identification of the parcel
 - ▣ a place for the property owner to indicate support for or opposition to proposed assessment

Procedural Requirements - Ballots

- Ballots must be:
 - ▣ in a form to conceal their contents
 - ▣ signed
 - ▣ mailed or delivered to the public agency prior to the close of the public hearing
- Ballots must remain sealed until the close of the public hearing
- Ballots may be submitted, changed or withdrawn prior to the close of the public hearing
- An agency may provide a return envelope

Procedural Requirements - Envelope

- The face of the envelope mailed to property owners must include in substantially the following form:
 - “OFFICIAL BALLOT ENCLOSED”
 - Must not be smaller than 16-point type



Procedural Requirements -Hearing

- Agency shall consider all protests
- Only ballots submitted will be considered as official protests
- After public hearing has been closed, the agency shall tabulate the ballots
- May continue the tabulation at a different time or location accessible to the public, BUT you must announce the time and location

Procedural Requirements - Protests



- An impartial person shall tabulate the ballots – clerk of the agency
- Must be done in view of the public if agency personnel or a vendor is used

Procedural Requirements - Protests

- A majority protest exists if, upon the conclusion of the public hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment - ballots shall be weighted
- Ballots submitted by more than one property owner are allocated based on ownership interest



Burden of Proof



- Burden is on the agency to demonstrate that the properties in question receive special benefit
- Burden is on the agency to demonstrate that the amount of the assessment is proportional to the benefits conferred

Grandfathering Clause

- Assessments existing when Proposition 218 was adopted are grandfathered if they fall within one of 4 categories:
 - ▣ Exclusively finance capital costs and O&M for sidewalks, streets, sewers, water, flood control, drainage systems or vector control
 - ▣ Assessment imposed pursuant to a petition signed persons owning all of the property
 - ▣ Assessments exclusively used to repay bonds
 - ▣ Assessments previously approved by majority vote
- Subsequent increases subject to Proposition 218

Omnibus Act

- Elections Code § 4000; Government Code § 53753(e)(6) – majority protest proceedings are not elections
- Government Code §§ 53739 & 53750 – CPI provision or range of assessment amounts (i.e., stepped amounts over time) can be implemented without a new protest proceeding
- Government Code § 53750 – definitions
- Government Code § 53753(e)(2) – ballots must be retained for 2 years

Increase - GC § 53750(h)

- Increase means a decision that does either of the following:
 - ▣ (A) Increases any applicable rate used to calculate the assessment
 - ▣ (B) Revises the methodology by which the assessment is calculated, if that revision results in an increased amount being levied on any person or parcel

Increase - GC § 53750(h)

- An assessment is not deemed to be "increased" in the case in which the actual payments from a person or property are higher than would have resulted when the agency approved the assessment, if those higher payments are attributable to events other than an increased rate or revised methodology, such as a change in the density, intensity, or nature of the use of land

Conclusion

- Proposition 218 is the progeny of a long line of taxpayer relief measures
- Proposition 218 establishes substantive requirements that make it more difficult to fund public facilities and services
- Proposition 218 establishes procedural requirements that provide property owners with a greater say on the levy of assessments to fund public facilities and services

Questions?

